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# Journal *of the* American Judicature Society

DANIEL WEBSTER

"LET'S KILL ALL THE LAWYERS!"
*EDITORIAL*

BAR ORGANIZATION AND JUDICIAL ADMINISTRATION
*GEORGE E. BRAND*

WHEN THE PRESS COLLIDES WITH JUSTICE
*SIMON H. RIFKIND*

EXTRADITION OF YOUNG PERSONS
*WARREN FREEDMAN*

AMERICAN JUDICATURE SOCIETY
Ann Arbor, Michigan

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*To Promote the Efficient Administration of Justice*

Founded in 1913 by Herbert Lincoln Harley

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JOURNAL OF THE AMERICAN JUDICATURE SOCIETY

Vol. 34, No. 2 GLENN R. WINTERS, Editor August, 1950

# "Let's Kill All the Lawyers!"

"THE first thing we do, let's kill all the lawyers."

How many times has this line from *Henry VI* been cited as an example of the disrepute into which the legal profession has fallen, today and as far back as Shakespeare's times?

To Edwin M. Otterbourg of the New York bar we are indebted for the suggestion that this item be read in its context. Speaking a few weeks ago before the Maryland State Bar Association, Mr. Otterbourg remarked:

"Attacks upon the legal profession as such, and, indeed, its complete elimination, have been and always will be the first objective of any totalitarian government. Dictators and despots always want to do away with the lawyers entirely.

"Shakespeare in *Henry VI* summed up the viewpoint of most of the modern dictators as well as the ancient ones. When Jack Cade announced that he was going to be king he said:

" 'There shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery that they may agree like brothers and worship me their Lord.'

"To which his boon companion Dick then said, 'The first thing we do, let's kill all the lawyers,' and Cade replied, 'Yea, that I mean to do.' "

One might almost suppose that Hitler had adopted Jack Cade as his pattern. His manipulation of German currency was such that in effect there was really no money, and the populace was dependent upon him even for such necessities as food and drink; he had most of his subjects in uniform, and at his command they all fell down and worshipped him. The German bar stood in the way of all these things, and Hitler proceeded to do just what Dick suggested—he killed countless individual lawyers and effectually did away with the German legal profession.

A profession bound by oath never to reject for any personal consideration the cause of the defenseless or oppressed cannot but be an intolerable obstacle to dictators and tyrants. It is the glory, not the shame, of the bar that the Jack Cades, the Hitlers, the Mussolinis and all the rest of the would-be tyrants and oppressors of mankind find the elimination of a free and fearless legal profession a necessary first step in the carrying out of their plans. May we never lose our unpopularity with the Jack Cades of the world!

*The idea that lawyers should unite to promote a more efficient administration of justice, was first proposed by Herbert Lincoln Harley, who devoted the best years of his life to this form of public service.*

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# Annual Meeting Announcement

DR. KURT VON SCHUSCHNIGG, former Chancellor of Austria and now a member of the faculty of St. Louis University, will address the thirty-seventh annual meeting of the American Judicature Society at a luncheon in the Federal Room of the Statler Hotel, Washington, D. C., Wednesday, September 20, 1950. Dr. Schuschnigg was a lawyer, a leader of judicial reform in the Austrian parliament, and minister of justice in the cabinet of his predecessor, Chancellor Engelbert Dollfuss. As chancellor, he guided his country through the difficult years immediately preceding occupation by Germany, and thereafter he was held prisoner by the Nazis until the end of the war. His address will deal with Central European courts and justice in the light of his own personal experiences.

Following the address of Dr. Schuschnigg will be held the annual business meeting of the American Judicature Society for the election of directors and other business, followed by a meeting of the directors for the election of officers. The luncheon is open not only to members of the Society and their guests, but to anyone interested. Tickets will be on sale at A.B.A. headquarters.

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OTHER EVENTS on the American Bar Association convention program will be of interest to students of judicial administration. Sunday afternoon, September 17, will be the annual Conference of Bar Association Secretaries. Monday afternoon at 2:30 the Section of Judicial Administration and the Conference of Chief Justices will present a program on "An Administrator for State Courts."

Tuesday, the 19th, as usual will be a big day, with more events scheduled than any individual can possibly attend. At 10:00 a.m. the Section of Bar Activities will have a program on bar association activities and bar communications. At the same time, the Section of Judicial Administration will be offering a playlet entitled "The Juror in the Jury Room" based on a study of jury reactions, by Judge Alexander Holtzoff of the United States District Court for the District of Columbia and a supporting cast. At noon that day Chief Justice Arthur T. Vanderbilt of New Jersey will address a joint luncheon of the Section of Bar Activities, the Conference of Bar Association Presidents and the Committee on Public Relations. At two o'clock the Section of Criminal Law together with the Conference of Chief Justices and the National Probation and Parole Association will offer a "Workshop on Probation" with Federal Judge Philip Forman of New Jersey, State Judge Emory H. Niles of Baltimore, and Municipal Judge James C. Otis of St. Paul on the panel. At three o'clock will be a public relations conference conducted by the sponsors of the noon luncheon mentioned above. At 7:30 that evening will be the annual Judiciary Dinner of the United States.

Wednesday morning at 10:00 will be a pre-trial institute conducted by United States Circuit Judge Alfred P. Murrah of Oklahoma City; and at the same time a symposium on the trial of criminal causes by Supreme Court Justice Robert H. Jackson, Chief Justice James C. McRuer of the High Court of Ontario, Honorable F. E. Louwage, Chief of Police of Belgium, and a layman. Also at ten o'clock that day, will be a model traffic court sponsored by the Section of Judicial Administration along with the National Conference of Trial Courts of Limited Jurisdiction and the American Association of Trial Courts of Limited Jurisdiction. This will be resumed at two o'clock after the American Judicature Society luncheon, and these organizations will continue their joint meeting at

ten and two on Thursday, with reports from the states and discussion of state court organization.

Places at which events will take place may be found in the A. B. A. convention program.

## "So Help Me God"

I DO SOLEMNLY SWEAR THAT:

*I will support the Constitution of the United States and the Constitution of the State of Missouri. I will maintain the respect due to courts of justice and judicial officers.*

*I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land.*

*I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.*

*I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval.*

*I will abstain from all offensive personalities, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.*

*I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice.*

SO HELP ME GOD.

After administration of the foregoing oath, Chief Justice Laurance M. Hyde of the Supreme Court of Missouri addressed a recent group of new lawyers as follows:

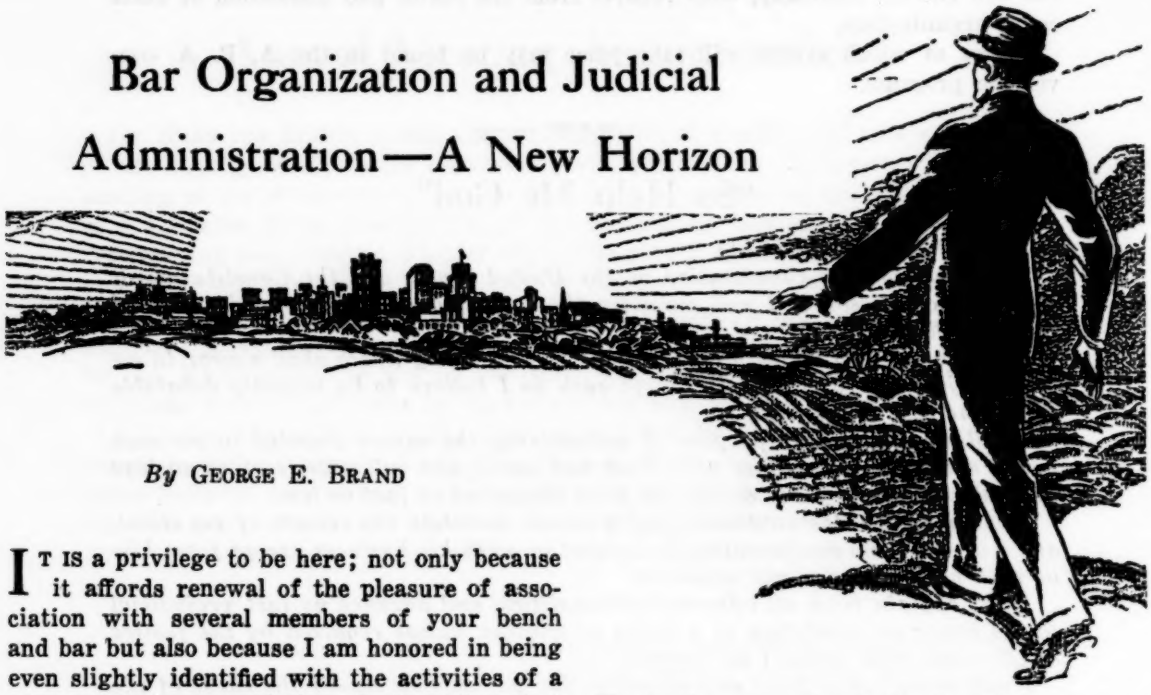
The oath you have just taken was prepared by the American Bar Association to supplement its Code of Ethics which this Court has adopted. It is used in the federal courts and in many states. It is based on priciples developed through the centuries of English practice, which find their beginning in the laws of ancient Rome. This oath has embodied in it the essence of the ethics of the bar. These canons of legal ethics are stated in Rule 4 promulgated by this Court. You should read the provisions of this rule carefully and be guided by them. The obligations of this oath should not be considered as a burden but rather as a commission for a high career—a career of sanctity and service in the administration of justice.

You take this oath because as lawyers you become officers of the courts. Under our form of government lawyers are essential to justice. The courts must depend to a great extent on the ability and industry of lawyers to prepare properly the cases they must decide. The best decisions result from earnest and sincere presentation by the lawyers involved. Thus you have a great opportunity and a great responsibility in developing and improving the law.

In becoming lawyers you become members of the Missouri Bar, which is an organization of all Missouri lawyers. We hope you will be active in it and work on its committees. The public expects lawyers not only to practice law but also to improve the law. The best means to accomplish this is through the organized bar. Let me urge you to become members of and join in the work of not only your state bar organization but also your local association and such national legal organizations as the American Judicature Society and the American Bar Association. The American Bar Association has furnished leadership for great improvements in the administration of justice throughout the nation, which have been accomplished during recent years. Active membership in bar organizations will help you to fulfill your obligations to the public and to get the full benefit of acquaintance and fellowship with the members of our learned and honored profession.

You are now members of the bar of this Court. We wish you happiness and success in the practice of the law, and hope you will be back here soon with cases to present to us.

# Bar Organization and Judicial Administration—A New Horizon



*By* GEORGE E. BRAND

IT IS a privilege to be here; not only because it affords renewal of the pleasure of association with several members of your bench and bar but also because I am honored in being even slightly identified with the activities of a great state bar association. I sincerely attest to the fact that the State Bar of Texas runs second to none in worthwhile bar association effort and achievement. Especial tribute is due to Mr. Parks, your secretary, whose state bar administrative abilities are nationally known and recognized.

I have never read more progressive or constructive reports than those of your sections and committees, printed in the June issue of your Journal. I place especial emphasis on those of the sections of District and Appellate Judges and Junior Bar and the committees on Administration of Justice, Committee on Committees, Legal Education and Institutes and Public Information. Judge Stayton's review of Chief Justice Vanderbilt's book *Minimum Standards of Judicial Administration* with its shaded illustrative maps should be classified as a very special report on judicial administration in Texas. He very aptly points out that Texas has made a great deal of progress in that field, and, as judges are ofttimes wont to do, he establishes that when the record as a whole is considered, things are not quite as black as they have been painted.

As your program so clearly reflects, those who have the responsibility of office in your state bar are keenly conscious of the need of progressive checking of bearings and taking of soundings, in the course of integrated bar function and activity and their relationship to judicial processes. They have sensed, as I have, the sincere desire of lawyers and judges to reach informed conclusions as to matters pertaining to the administration of justice and to the legal profession. In that connection the best use of such talents as I possess has been the widespread gathering and dissemination of informative facts upon which solution of problems may be predicated, and from which may be derived the inspirations of new horizons. Not many of us have the opportunities or the facilities for gathering such information, and those of us who do, owe the pleasant duty of passing it on.

I make an initial observation: Actual accom-

GEORGE E. BRAND is a member of the Detroit bar, president of the American Judicature Society, and member of the Board of Governors of the American Bar Association. He has served as president of the Detroit Bar Association and the State Bar of Michigan, and on many American Bar Association committees. He is author of *Unauthorized Practice Decisions* (1937), and will soon publish a book on bar organization. This was an address before the State Bar of Texas, San Antonio, July 7, 1950.

plishment, or efforts to accomplish, are tangible manifestations of a recognition of responsibility, and this is true as to judicial and professional obligations.

My remarks are pointed by two recent occurrences; first, your sister state, Florida, has officially integrated its bar; second, forty-six state court chief justices recently held an initial conference.

First, as to bar organization:

### THE LAW AS A PROFESSION

The keynote is in the statement made by Dean Wigmore in 1915, that "the most important truth about the practice of law is that it is, and the inherent nature of things demands always that it shall be, a profession."

The lengthy but unsteady process by which this fundamental concept was evolved and became recognized and transformed into definite results, is portrayed in the history of bar organization in this country. Curiously, however, the bar went full-circle from its initial recognition of the fact that the legal profession, *as a whole,* had problems, functions and obligations transcending those of the individual lawyer and groups of lawyers. The route was properly laid, but for over 100 years thereafter, the activity was in the opposite direction. Consequently the development of "professional" responsibility and function was longest deferred.

Three periods are involved: Colonial, post-Civil War and post-World War I.

As the late Philip J. Wickser has pointed out,[1] prior to the Revolution, a number of colonial bar associations were formed, notably in the City of New York, New Jersey and various New England counties. Reflecting the characteristics of the highly organized, official and self-governing bar of the mother country, these early colonial associations were *designed* to be all-inclusive as to membership, and to regulate admission to the bar. However, they existed but feebly, and soon withered under the adversity of imposed legislative control over the practice of law and the rigors of post-Revolution frontier individualism.

I suppose that this accounts for the fact that, as individuals, the lawyers furnished outstanding leadership in the formation of our constitutional government, but I have yet to find mention of any contribution thereto by the organized legal profession.

As late as 1838 the Southern Literary Messenger, apparently blasting at the desultory bar groups organized in the South early in 1800, stated that bar associations—"are wrong in principle, betray competition, delay professional freedom, degrade the bar;" and in 1846, when a group of lawyers organized in Kentucky, a constitutional amendment against the legal profession was proposed.

The law of Indiana, only recently changed, permitting any person of avouched good, moral character to practice law, was a vestigial appendage of that rebellious philosophy which, for many decades, made laymen eligible to judicial office—an unseemly privilege still preserved as to the Supreme Courts of Wisconsin and of Michigan but, fortunately, not as to the Supreme Court of Texas.

### EARLY BAR ASSOCIATIONS

With very few exceptions (including the Philadelphia Bar Association, organized in 1827 and the Detroit Bar Association, organized in 1836) there were no active organized bar associations in the United States until 1869, when the trend toward bar organization of the voluntary-selective type began to develop. Up to this point was the heyday of the rugged individualist, a fitting role for the lawyer of any era; but who, when uncounterbalanced by recognition of the fact that he is also the basic unit of a profession, may unintentionally subvert or foreclose *professional* function and accomplishment.

The New York County Bar Association, of the voluntary-selective type, was organized about 1870, and the movement grew until there were bar associations of that kind in every state and territory.

The American Bar Association was organized in 1878, on this orthodox pattern, but for the first few years it functioned mainly for social purposes.

Until 1921 (nearly 175 years after the creation of the early colonial bar associations, whose official aspirations were effectively aborted) there were no bar organizations in the United States other than of the voluntary, selective, non-inclusive, unofficial type.

It cannot be gainsaid that these voluntary

1. 15 Cornell Law Quarterly 393 (1930).

bar associations (usually consisting of a minority of the bar and with emphasis throughout upon the members individually) contributed substantially to the improvement of the standards for admission to the bar, in bringing about some changes in procedure and substantive law and, to a variable but limited extent, in inducing judicial discipline of unworthy lawyers. However, as I view it, the result was sporadic, and, to the limitations inherent in the prevalent type of bar organization and the failure to recognize the collective responsibilities and potentialities of the profession as such, can be laid much of the blame for quiescently permitting the legislatures to arrogate the exercise of the judicial rule-making power; the widespread prevalence of ambulance-chasing and unauthorized practice of the law by laymen and lay agencies, and the almost complete regulation of admission to the bar and discipline of lawyers. Particularly was this true as to the local bar associations, the activities of many of which, in the 1890's were limited to annual banquets given to the judges, the reading of papers and the preparation of obituaries.

Although lawyers were highly regarded as individuals, the bar, collectively, was low in public esteem.

I discovered but a short time ago, that Wigmore[2] appraised it much more severely and dramatically. Said he:

"* * * the profession was a complacent, self-satisfied, genial fellowship of individual lawyers—unalive to the shortcomings of justice, unthinking of the urgent demands of the impending future, unconscious of their potential opportunities, unaware of their collective duty and destiny."

Wigmore's statement appeared as a preface to a 1937 reprint of Pound's 1906 warning address "The Causes of Popular Dissatisfaction with the Administration of Justice."

## THE INTEGRATED BAR

In 1913, seven years after Pound spoke, Herbert Harley, a lawyer-editor living in a small sawdust town "up in the sticks" in Michigan, conceived the idea of organizing the American Judicature Society. He was moved by the growing dissatisfaction with the administration of justice, and, as one of the means of improving the judicial processes he advocated an all-inclusive, self-governing, responsible bar. He had previously made a study of the Law Society of Upper Canada which, as you know, is the all-inclusive, official bar organization of which every lawyer practicing in Ontario must be a member. The Canadian Society has exclusive control over admission to the bar, within its territory. It prescribes the educational requirements and conducts its own law school, Osgoode Hall, at Toronto. Articled clerkship to a practicing solicitor for three years and graduation from Osgoode Hall are conditions precedent to call to the bar by the Law Society, not excepting English, Irish, Scotch and Colonial barristers. Reciprocal admission of members of the bar of various Canadian provinces is permitted without graduation from Osgoode Hall and with a shorter period of clerkship; but the call fee in such special cases is $1,500.

As a result of the activities of the American Judicature Society and of the American Bar Association, there was prepared and published in 1918 a model form of integrated bar statute; the idea seeming to be at that time that integration should be pursuant to legislation. The model statute was the first integrated bar statute prepared in this country, and was the one that North Dakota adopted in 1921, but with very considerable elimination.

For the first ten or fifteen years integration was accomplished under the model form of statute, which I refer to as the "comprehensive" statute, because, by rigid legislative enactment, it prescribed, not only the framework, but all of the details of the organization and function of the integrated bar; thus making legislative intervention necessary to effect adjustments to meet changing or unforeseen conditions.

In 1934 the Kentucky bar was integrated by means of a short so-called "enabling act" which contemplated implementation by court rules. The Michigan bar then abandoned its efforts to procure passage of a comprehensive statute and (in 1935) accomplished integration under supreme court rules promulgated after the legislature had passed a short act. The Michigan rules are so drawn as to be sustainable under the court's inherent power.

In 1934 the Huey Long legislature passed an act integrating the Louisiana bar, but placed it under the control of laymen. In 1940 this act was repealed and an act was passed memorial-

2. 20 J. Am. Jud. Soc. 176 (Feb., 1937).

izing the state supreme court to integrate the bar—which the court did in 1941.

In 1934 the Supreme Court of Missouri took an epochal step. Relying solely on inherent judicial power, it promulgated canons of ethics for the bar of Missouri and established in each judicial circuit a committee of lawyers empowered to investigate and hear charges of professional misconduct. If after such hearing the committee found that there was proper cause to believe the accused was guilty, the committee was required to file and prosecute an information thereon in the circuit court. Each licensed lawyer in Missouri was required to pay a fee into the bar fund for the payment of the expenses of the circuit committees. Ten years later, in 1944, the Missouri court, by rule under inherent power, established and provided for the government of the Missouri bar; thus more fully integrating that bar.

Nebraska and Oklahoma have also integrated pursuant to inherent julicial power. This did not occur in Oklahoma, however, until after the legislature repealed a comprehensive statute under which the Oklahoma bar was previously integrated.

In 1939 the State Bar of Texas Act was passed; a bit longer than our Michigan act, but, in the main, of the same type. Your act, as ours, contemplated extensive implementation by court rules. In 1939 Arkansas, under an amendment to the state constitution, adopted rules of the Missouri type requiring each practicing attorney in Arkansas to defray the expenses of enforcement thereof.

### TWENTY-FIVE ARE NOW INTEGRATED

The following states are considered as integrated: Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, Wyoming, New Mexico, North Dakota, South Dakota, Nebraska, Oklahoma, Texas, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Kentucky, Michigan, North Carolina, Virginia, West Virginia and Florida—twenty-five in all. On June 6, 1949 the Supreme Court of Florida granted the bar's petition for integration of the Florida bar by inherent judicial power. On the referendum of the 2700 members of the Florida bar conducted prior to seeking integration, 1100 voted for and 500 against integration. The new organization was completed at the April convention this year.

Of all twenty-five integrated states, fourteen are integrated by comprehensive statute, six by court rule subsequent to short statutes or enabling acts, one by court rule subsequent to constitutional amendment and four by court rule supported solely by inherent judicial power. Florida is the fourth in the latter category.

None of the New England states is integrated.

There are only five unintegrated states west of the Mississippi: Colorado, Kansas, Montana, Minnesota and Iowa.

In 1938 the voluntary state bar association of Montana resolved in favor of integration under inherent judicial power and petitioned the Montana Supreme Court accordingly. The Court, in 1939, denied the petition, awaiting, as it said, "a more impressive showing." The petition was renewed in 1945, but was denied in 1947. Some members of the court apparently thought that integration should rest on legislative sanction. There is indication that resort thereto my be the next move in Montana.

In 1943 the Minnesota Supreme Court postponed action on the state bar's petition for integration by court rule; awaiting the return of bar members who were then in the armed forces. At a referendum conducted by the bar in 1947, 1079 lawyers voted for and 1081 voted against, integration. In 1948 the petition was revived and denied. Apparently the matter is at rest in Minnesota.

A short enabling act passed in Wisconsin in 1943 was adopted over veto of the lieutenant governor, acting in the governor's absence. The lieutenant governor, by suit, later unsuccessfully challenged the act, whereupon the bar petitioned the Wisconsin Supreme Court for integration. Surprisingly, the court, in 1946, denied the petition. Since then the voluntary state bar association has been reorganized, but the movement for integration has merely been halted.

As to the comparative number of lawyers in the integrated and unintegrated states:

Using the 1940 federal census figure of 179,554 lawyers in the United States (including 4,821 in the District of Columbia) it appears that 58,232 or 32.43% thereof are in the integrated states, not including Florida. (If the District of Columbia is not included the percentage is 33.32%.) This figure has been slightly changed by completion of integration

in Florida. On the basis of a 1949 survey Florida has 2927 lawyers or 432 more than the total of the lawyers in the five unintegrated states of Delaware, Maine, New Hampshire, Rhode Island and Vermont.

However, it is practically impossible to procure a complete list of the members of the *un*-integrated bars. The court records of original admission are not adequate for such purpose, and reliance must be placed on such services as censuses, legal directories, etc. For example, in 1940 the federal census lists 5,339 lawyers in Michigan. The records of the Michigan State Bar show that in that year the membership (not including inactive members or those in military service) was 6,377. Actual count of lawyers made from the Martindale-Hubbell Law Directory showed almost as great a variance as to the Michigan bar membership.

I mention this because when you consider the effacing, and many times problem-raising, employment of many lawyers in executive, governmental and business positions, the importance of having a complete roster of, and a medium of contact with the members of the bar is obvious.

There has been a further interesting development. In at least four unintegrated states the voluntary state bar association, or committees specially appointed, have been invested by the supreme court with some function in disciplinary matters. A similar situation may exist in a few other states. In Colorado and Pennsylvania the state bar association is so designated. In Illinois the Chicago Bar Association and the Illinois State Bar Association are designated. In Florida the court, several years ago, established circuit commissions, but steps already have been taken to transfer this function to the newly integrated bar.

The disciplinary procedure thus created in these four unintegrated states, in the main, was patterned on integrated bar disciplinary procedure, and there is no doubt in my mind that it was suggested thereby. That this development could well be regarded as a step toward integration in those states has been borne out by the decision of the Florida court to integrate its bar. In some of these four states the expense in connection with these imposed functions is borne by the voluntary bar association. How great a burden this may be is disclosed by the experience of the Chicago Bar Association under the Illinois court rule. I am informed that the expense is about $40,000 a year. According to the 1940 census there are about 13,000 lawyers in Illinois and I estimate that about 40% are in the Chicago area.

## ETHICS

In summarizing as to the twenty-five integrated states I shall, from time to time, refer specifically to Texas; thus enabling you to indulge in some self-appraisement.

For years I have been engaged in ascertaining the exact extent to which the bench and bar are subject to prescribed canons or rules of ethics. I have completed the survey as to the integrated states. Generally speaking, in those states the canons of professional ethics of the American Bar Association (of one vintage or another) or something along the lines of such canons, have been adopted or promulgated; but, with only a few exceptions, no official canons or rules of professional ethics have been adopted or promulgated in the unintegrated states.

You have your own canons of professional ethics but, in the main, they reflect the ethical principles of the A.B.A. canons. You did a thorough job of revision but, from a standpoint of an analyst, it is comforting that not all state bar associations were as industrious and meticulous.

Only seven of the twenty-five integrated states (Florida, Idaho, Michigan, New Jersey, South Dakota, Virginia, West Virginia) have adopted official canons of judicial ethics.

In two states, i.e., New Mexico and Oregon, the integrated state bars have adopted the A.B.A. canons of judicial ethics, but the supreme courts have not confirmed such action. Texas has not adopted judicial canons.

As far as I have checked, the Pennsylvania Bar Association is the only unintegrated state bar association that has adopted judicial canons. The Florida State Bar Association, however, did so before integration. Without judicial confirmation, such adoption can have but slight effect.

## BAR ADMISSION

In twelve of the twenty-five integrated states the bar has a responsibility in the appointment of bar examiners. In five of these twelve the appointment is solely by the bar and in the other seven by the bar and the Supreme Court.

In ten of the twenty-five integrated states the bar participates in the prescription of qualifications for bar admission. In three of the ten the bar prescribes the qualifications, in one the prescription is by the bar and the legislature and in the other six by the bar and the court.

Your Texas state bar has no function with respect to appointment of bar examiners or the process of bar admission. In this respect it is in the minority, despite the fact that your Supreme Court, which gave you the rules governing integration, has similar power with respect to admission to the bar.

### DISCIPLINE

In twenty-three of the twenty-five integrated states the bar has a function in connection with disciplinary proceedings. In nine this function is confined to mere investigations and in thirteen it involves both investigation and trial. In two the state bar has no such function.

The variance in the disciplinary procedures subsequent to integrated bar investigation and report is indicated by the fact that in some of the integrated states a separate court proceeding is initiated in the county or appellate court and trial is had *de novo.*

Appointment of special masters is not unusual in connection with such trials. In some states the bar is divorced from all connection with the court proceedings. In others the court hearing is on exceptions or objections to the report of the bar on the theory that the bar board or committee charged with disciplinary duties is an arm of the court and serves in that connection as court master or commissioner. In others (a minority) the right to trial by jury still exists. Your rules invest your state bar grievance committees with desirable power to investigate and conduct hearings as to alleged professional misconduct and to institute court proceedings. Affording a court trial *de novo* is not unorthodox procedure, although the system of court hearing upon the record made before the grievance committee or state bar board (with adequate safeguards) seems to me to be preferable. Trial by jury as to issues of fact in disciplinary proceedings does not seem to square with the concept that courts have the right to regulate and supervise the conduct of court officers. At any rate, there is no indication that worthy members of the bar are prejudiced by disposal of charges of professional misconduct without the intervention of a jury. Unquestionably the jury is not essential to due process of law. I appreciate that a constitutional question inheres in the stricture laid on your court by the state bar act in respect of jury trial.

### UNAUTHORIZED PRACTICE OF LAW

In several of the states the integrated bar has definite and official duties and powers concerning the unauthorized practice of the law. In some the function is confined to mere investigation, with or without the use of subpoena. In others there is power to initiate court proceedings for relief. The provisions of your bylaws confer desirable power on your grievance committees as to investigating and suppressing unauthorized practice of law. Similar provisions would greatly strengthen the state bars of other states and better enable them to render service in the public interest.

Time will not permit me to catalog all of the disssimilarities in the integrated bar statutes and rules. They span from matters of mere detail to those of basic objectiveness.

Although bar integration is an outstanding *organizational* development, the term "integrated bar" is a general appellation designating an organized status, and represents a variable as to quantum of bar function and power. Consequently the same is true as to the responsibilities thereby or implicitly acknowledged or recognized. Much of this is attributable to the fact that integration is still relatively new. It was usually vigorously opposed before adoption and often was the result of compromise or fearsome or pressure withholding—whether integration was pursuant to statute, court rule, or both. The resultant regulations quite likely reflect this.

### LAWYERS AND PUBLIC SERVICE

Nevertheless, the development of all-inclusive, self-governing official bars in a majority of our states, and the consequent stimulation of selective bar associations in most of the other states, was the end-product of efforts that were primarily directed at the individual constituent members of the bar by requiring higher educational qualifications for admission to the bar, stricter observance of ethical standards of professonal conduct and the voluntary rendition of some public service, particularly

in ridding the bar of unworthy members. Thereby, and in such individualistic respects, much has been accomplished, and the links that form the individual members of the bar of this country into a profession have themselves been made strong; to the edification rather than to the subordination of the individual lawyer. Granting all of this, and also that there will be no retrogression, should we not now step up and open our eyes to the new horizon of *collective* responsibility and of *collective* public service? There can be but one answer: We *must*.

In his recently published book David E. Lilienthal stated his belief that every qualified private citizen should reserve a number of his best and most productive years for governmental service. That has a familiar ring. It has been said to lawyers many times, by professors in the law schools, by bar program speakers, and by those who write. And it is well that this is so.

But the Detroit News, in a sympathetic editorial as to Mr. Lilienthal's suggestion, laid finger on a realistic factor which appears to me to be applicable as well to the individual lawyer. The News states:

"The trouble with Lilienthal's idea is that few men plan, or can plan, their lives to the extent they would like. Making a living is usually plan enough, and the more able a man is the more apt is he to be too engrossed in his career to indulge in such side lines as public service. There are exceptions, of course, for which the nation has had many reasons to be thankful."

No leader in the development of professional consciousness, nor any other member of the bar, can be insensible to the limitations of the individual practicing lawyer with respect to the rendition of public service, and it is a tribute to them that the efforts to which I have referred have not only been realistic but also fruitful; probably more fruitful than most of us realize. Through organized bars and bar associations, the legal profession throughout this country constitutes a force, whose potentialities for public service in connection with the administration of justice, are incalculable.

And this brings me to concluding remarks:

We have lived in turbulent times; times productive of tremendous speed in communication, transportation and destruction; of repetitive war and peace; of dissolution of old governments and creation of new ones, of court packing; of espionage and treason; of excitation, challenge, defiance, derision, double-talk, half-truth, slogan and mumble-jumble. Our very form of government and the judicial system under it have been attacked. We have been confounded by contrasts and contradictions. We have been told to abide by the golden rule, while others have repudiated the very foundation or justification of that rule; we have been admonished to seek the truth and to expect justice, but there were those who said there is no truth and no justice, and that everything is relative. We have been encouraged to think that ambition spurs man to struggle with destiny—but discouraged by statements that man has no destiny, or if he has it is useless to struggle against it. The motto "Live and let live" surely must have derived from Holy Writ, but its source has, ironically, been ascribed to Aesop's Fables; and so it goes. But as one advances in years, assuredly he gains a definite impression as to what constitutes real values in life—whether the impressions intentionally or unconsciously result from self-effort to discern the truth, or to avoid it. However, I have no doubt that every one here today has, in some hour of bewilderment, frustration or introspection, honestly wondered "what it is all about." Perhaps, and probably, we shall never learn the full answer, but calm thought does produce some measure of an answer, and, speaking as one lawyer to another, I shall give you mine with respect to the legal profession and the judicial processes.

## RESPONSIBILITY OF THE JUDICIARY

I am sure that no judge is insensible to the dignity of the judicial office or to the responsibility to administer justice to litigants whose causes are presented for determination: but I pose the question whether there is not the possibility, and even the probability, that the judicial function and responsibility are mistakenly regarded by bench and bar alike as *derived from* the government, rather than *supplied to* the government as an essential part of it. Ours is a government under basic law which distributes governmental function among three departments as the means of providing a balanced government. Certain inescapable dependencies of one department upon the others

implicitly provide appropriate checks and balances capable of assuring the desired results.

We readily realize that the privileges of the individual in a republic imply his responsibility for their exercise; yet I fear that we do not fully understand that the same principle applies to each of the departments of government.

I hold that the responsibility for the administration of justice, and for its integrity and efficiency, rests upon the judiciary, and extends to every judge, regardless of the division in which he or she serves. That duty should not be ignored, and the responsibility for its discharge cannot be by-passed or constitutionally bridged to others. If the system of administering justice is inefficient, inadequate, out-moded or thwarted by any means or by any one, or if public confidence in or respect for the judicial process is waning or lacking, the judiciary and each member thereof has the responsibility for effecting correction. The entire judiciary of the state, each judge recognizing his or her integral relationship, should *collectively* consider itself to be what it constitutionally is, an official department of government; and its needs should be developed, considered and attained accordingly.

I do not think that, by and large, the state judiciaries, collectively or individually, in the past have either recognized this responsibility or have sought to discharge it. True, there have been exceptions, and to the few judges who constituted them reverent gratitude is due for their helping hand to those who have lagged, and the light that makes easier the way of correction.

The responsibility of the judiciary to assume its sphere of governmental function and to supply judicial administration and make it work in connection with an overall constitutional system of general government, in my opinion, is one that the judiciary alone is incapable of meeting without the aid and assistance of that constituent element in the administration of justice, the organized bar. This requires no amplification from me. Part of the load must necessarily be borne by lawyers, if our judicial system is to be efficient and justice is to be the product. Great leaders of the bench and bar have carried the torch and have kept it lighted, but headway was greatest when the effort was backed by the force of an organized bar.

It was most heartening and epoch-making that under the aegis of the Section of Judicial Administration of the American Bar Association, the chief justices of forty-six of the state supreme courts held an initial meeting in St. Louis in September to take up, *for the first time on a top level basis,* nationwide improvement in state judicial processes and procedure —a task which they alone could not initiate and, without the active aid and assistance of the organized state bars and bar associations of this country, cannot hope to accomplish.

This, my friends, is the new horizon of collective responsibility; but there is much evidence that it has already been envisioned by the bench and bar of Texas.

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Other misfortunes may be borne, or their effects overcome. If disastrous war should sweep our commerce from the ocean, another generation may renew it; if it exhaust our treasury, future industry may replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again and ripen to future harvests.

It were but a trifle even if the walls of yonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All these may be rebuilt.

*But who shall reconstruct the fabric of demolished government?*

*Who shall rear again the well-proportioned columns of constitutional liberty?*

Who shall frame together the skillful architecture which unites national sovereignty with state rights, individual security and public prosperity?

No, if these columns fall, they will be raised not again. Like the Colosseum and the Parthenon, they will be destined to a mournful and a melancholy immortality. Bitterer tears, however, will flow over them than were ever shed over the monuments of Roman or Grecian art; for they will be the monuments of a more glorious edifice than Greece or Rome ever saw—the edifice of constitutional American liberty.—*Daniel Webster.*

# When the Press Collides with Justice

*By* SIMON H. RIFKIND

THERE has been much talk lately of what is called Trial By Newspaper. In recent months there have been a number of cases in the courts which have aroused widespread public interest, and there has been a correspondingly widespread coverage of the details of the cases—from the first rumors of charges to the final verdict of the jury.

Although the problem has been accentuated recently, it is not a new one. I need not emphasize that there have been clashes between court and press at certain times long before the current controversy. There is a vast literature on the subject but, like the weather, it is something we constantly talk about but never do anything about. Now, however, that the citizens of New York are trying to do something about their weather, perhaps the citizens of our country can be induced to take some steps to resolve this conflict between court and press.

If one stops to inspect the collision which occasionally occurs between the courts and the press, one discovers that it is a contest, not between right and wrong, but between two rights. All contests have dramatic possibilities, and if we were to search for the appropriate branch of the dramatic arts to which this particular contest belongs, I think we should find it to be that class which the Greeks called tragedy. It is a contest between hero and hero, not between hero and villain. In such a tragedy the end is always disastrous, and in those unfortunate cases where conflict develops between court and press, the result is frequently disastrous to justice itself.

Two illustrations demonstrate how the problem arises in this country and in England, and how differently it is disposed of in the two places. What follows is reported in the appendix to a decision of the United States Supreme Court written by Mr. Justice Frankfurter.[1]

## TWO CONTRASTING CASES

Sometime early last year a man named Haigh, the so-called "Bluebeard," was arrested in England and charged with murder. He was in custody when the London *Daily Mirror*, in a style familiar to those who read New York newspapers, described him as a "vampire" and said that he had committed other murders. The newspaper published a photograph of one of his alleged victims with a description of the manner in which that alleged crime had been committed. Haigh sued out a writ to punish

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1. Maryland v. Baltimore Radio Show, 338 U. S. 912 (1950).

the editor and publisher of the *Daily Mirror*. The issue before the Court was not whether the published story was true or false. The Court said that the truth of the publication was immaterial, but that the story had made it very difficult for Haigh to obtain a fair trial. The Court thereupon sent the editor of the *Daily Mirror* to jail, fined the publisher £10,000—before devaluation—and warned the directors of the publishing company to beware, that the arm of the court was long enough to reach even them. That was done in England where, as we know, there is a high standard of judicial performance and where exists what we would regard as a free press.

How was a similar incident handled in the United States?[2] A child in the City of Washington had been brutally murdered, and ten days after discovery of the crime, another child in nearby Baltimore was tragically slaughtered. There was great excitement and fear throughout Baltimore. At this point a radio broadcaster went on the air and opened his program with the words, "Stand by for a sensation." He then reported the arrest of one James and stated that James had confessed to the killing of the child in Baltimore. He said that James had a prior criminal record, and that at the request of the police he had reenacted the crime and had even disinterred the murder weapon.

The Baltimore Court, holding that the broadcast constituted a "clear and present danger" to the administration of justice and an obstruction to the judicial process, convicted the broadcaster of contempt of court. The highest court of Maryland reversed, feeling that it was compelled to do so under the decisions of the United States Supreme Court. The conviction of the newscaster was regarded an as abridgement of freedom of speech and of the press. The Supreme Court subsequently denied an application for a writ of certiorari.[3]

The difference in the treatment of the conflict here and in England is clearly illustrated by the case of the scientist Fuchs, convicted of having divulged secrets relating to atomic energy. Before Fuchs' conviction, the *New York Herald Tribune* one day headlined the fact that the "British Press Can't Comment on Fuchs' Case. Law Forbids Discussion of Charges Pending Trial." Here, on the other hand, everything pertaining to the Fuchs case that the papers could gather was published. There is practically no restraint upon the character of the information and opinion which a newspaper can publish about a case before trial, while it is pending before a jury, or after it has been decided.

## CONSTITUTIONAL PRINCIPLES

What is involved in the problem is a clash between two great constitutional principles. On the one hand our Constitution proclaims that we are all entitled to freedom of expression by word of mouth or by publication, and that Congress shall pass no law abridging that right. On the other hand, the Constitution guarantees due process to one accused of crime.

If you look at the problem from the point of view of the press alone, the answer is rather simple—news is news. It is not only a commodity that can be sold, but the press would cite a much higher warrant for its activities. The press would say that it has a responsibility to impart to its readers such information as it can obtain. What happens in the courtroom is public property and the public is entitled to know how the public business is transacted. The reporter, no less than any other private citizen, is entitled to express his opinion on what he sees and hears in court, and his comments therefore are immune from interference by virtue of that guarantee of freedom of the press. If you point to the fact that it exposes the judicial process to some risks and injuries, the answer would probably be that that is part of the price we have to pay for the privilege of enjoying freedom of the press.

There is considerable to be said for the proposition that the minute you deny the verity of this claim to immunity, you must endow someone with the right to say what shall or shall not go into the press, and that means censorship. That means censorship even though the censors may be judges. Judges are men, not angels. While some would exercise the power of censorship with high regard for the true interests of the judicial process, others might exercise it to prevent perfectly proper criticism of their own administration of office.

That is what the press could say; and they could call upon high authority to sustain the positions that we cannot have a free society without a free press, and that at whatever point we interfere with freedom of the press we

exercise a corrosive influence upon the freedom of our society. The authority to whom they could refer would be Thomas Jefferson himself who said—in language indicating that the habit of one segment of the fourth estate has not changed materially in a century and a half—

"I deplore . . . the putrid state into which our newspapers have passed, and the malignity, the vulgarity, and mendacious spirit of those who write them. . . . These ordures are rapidly depraving the public taste.

"It is however an evil for which there is no remedy, for our liberty depends on the freedom of the press, and that cannot be limited without being lost."[4]

## THE JUDGE'S POINT OF VIEW

If we look at the contest from the point of view of the other contestant—those who try to keep the judicial system running with its high tradition of adherence to due process and fair trial—we get an entirely different picture. They start with a proposition which is basic: that the judicial process is the central pivot about which a free society revolves. I sometimes marvel at the fact that in over five thousand years of history we have invented no other institution for the disposition of human conflict without violence. It has been a slow growth. In international affairs we have not yet made the institution workable. I therefore need make no apologies for feeling that it is mighty important to preserve that institution against deterioration.

There are many parts of the world today where judicial forms are used to accomplish results foreign to the judicial process. They have a courtroom, a bench, judges and people called lawyers. They often have persons identified as witnesses. But if you read the record of their proceedings, you feel that a great institution has been subverted and perverted to an utterly foreign purpose. Naturally we feel a sense of revulsion when we read of that kind of activity. It is important for us, therefore, to be alert to any intrusion into the judicial process which may impair the high idealism which animates it. The process functions successfully only as long as the public feels that it grinds out what they can accept without—to use the title of a recent book—a "sense of injustice." Law loses its normative function the minute the public loses faith in the judicial process and feels that it is a mill that grinds out sometimes justice and sometimes injustice. Then order can be maintained only by the force of tyranny.

Lawyers and judges make heroic efforts and resort to much ritual to preserve public confidence in the judicial system. We go to great lengths to make certain that our juries are free from prejudice. After they are impaneled, the judge keeps reminding the jurors, and thereby himself, that they must decide the case solely on the facts openly adduced in court and on argument openly heard in court. We proceed in an orderly manner, so that first one side and then the other is given the fullest opportunity to speak. By means of the rules of evidence, an impartial judge screens the information which is passed to the jury to make certain that nothing enters which can pollute the stream of information upon which the jury is to decide the rights of the litigants. An atmosphere of dispassionateness, of objectivity, of serenity prevails in the courtroom.

That time-honored procedure, forged through the generations to the single end that issues shall be impartially determined on relevant evidence alone, works fairly well in all cases but one—the celebrated cause. As soon as the *cause celebre* comes in, the judges and lawyers no longer enjoy a monopoly. They have a partner in the enterprise and that partner is the press.

## INFLUENCING THE JURORS

The process of erosion begins long before the trial. The area from which the jury panel is to be called is drenched with all kinds of information—some true, some false—all unchecked by the selective processes of the law, all uncleansed of the dross which it is the object of the laws of evidence to exclude. By the time the panel is called to the courthouse, its members have been living in a climate surcharged with emotion either favorable or unfavorable to one of the litigants. To exclude from the jury panel all who have read about the case or heard about it over the radio is to reduce the jury to the blind, the deaf and the illiterate. So the jury must be selected from these precharged human vessels.

And then comes the trial itself. Recently my colleague, Judge McGohey, told me of a simple case before him involving an injured seaman.

4. Quoted by Black J. in Bridges v California, 314 U. S. 252, 270 (1941).

There was something in the papers in the case about the man's origin and early history which was inflammatory, and which would have diverted the jury from its duty to decide the case on the relevant facts. Judge McGohey told me that, as a matter of course, he called counsel to the bench and secured an agreement that that material should not be disclosed to the jury. The jury never heard about it, and decided the case without reference to this prejudicial material.

If that were a celebrated case, what would have happened? Judge McGohey would have had the same agreement with counsel, and the material would have been kept from the eyes and ears of the jury that afternoon. That night the twelve men and women would start for home and, fifty feet from the courthouse, they would receive a copy of their evening paper and there, on the front page, would see the excluded material. If any one of them was near-sighted, he would arrive home, turn on the radio at 7, 8 or 9 o'clock, and hear a commentator express his views on this piece of excluded evidence.

The next morning the jurors, on their way to the courthouse, would open their morning papers and there read the column of a hypothetical columnist whom I shall call Sokolborn. In his column would appear the statement, conveying this thought: "I don't think this witness ought to be believed. After all, he has a bad record and is a convicted liar. But I think every intelligent juror should place credence in the other witness."

Or it may be that in the courtroom a question is asked and objection is taken. The judge listens to argument and during a recess consults Wigmore on Evidence. Wigmore refers him to some cases which he reads. After some meditation he returns and renders his reflected decision: "Objection sustained." The answer is not given in the courtroom. But that night, in Mr. Sokolborn's column, the jurors find the question and they find the answer—but with a difference. The answer they find is not protected by an oath and whoever supplies that answer does not take upon himself what we used to call the risk of the pains and penalties of perjury. Further, whoever supplies the information for that column does not have to confront the defendant as he would if he were a witness in the case. The informant is not subject to cross-examination, a process which has been called the greatest instrument ever invented for the discovery of truth. So we have unsworn testimony, unconfronted-witness-testimony, uncross-examined testimony going to the jurors. Moreover, it is uncontradicted testimony because the story in Sokolborn's column is not received in evidence, and therefore the poor defendant or plaintiff, as the case may be is not afforded the opportunity to put anyone on the witness stand to contradict or explain it.

That is indeed a strange situation. If that kind of practice obtained in surgery, the situation would be somewhat as follows. The poor victim is on the operating table. He has been prepared by all the latest methods of science so that he is as pure, as clean, as sterile as science can make him. He is wheeled into the operating room, which has been as thoroughly prepared for his reception. No germ would dare to penetrate the devices employed for its extermination. The doctor wears a sterile gown. He has cleansed his hands, turned off the faucets with his elbows, and donned rubber gloves. The nurses have masks over their mouths to prevent contamination. Elaborate precautions are taken to insure against infection. Precisely when the incision is made, the windows are thrown wide open, and the dust, dirt and pollution of the Sanitation Department's trucks are allowed to enter.

If that were the practice of surgery, we would think the surgeons were mad. And of course they would be. There would doubtless be numerous medical miscarriages. And when we use a comparable method in the courts, we have miscarriages of justice.

And here is the strangest part of the dilemma. Sokolborn never took an oath. He was never scrutinized by the FBI. He was never passed upon by the United States Senate, a comparable state body, or the voters. He has his license to write only because a publisher gives him a column in his paper. But Sokolborn is free to comment on the evidence in the case; he is free to disclose testimony which the judge excludes, to tell the jury whom to believe and whom not to believe. The only man not allowed to make any comment is the one man who has devoted his lifetime to the study of the law, the one man who has taken an oath to be impartial, and the one man who by professional habit has achieved freedom from external pressures.

Were the judge to say anything to the jury about whom to believe and whom not to believe, he would commit reversible error. Once we take on the celebrated cause we go down the rabbit-hole into Wonderland, a realm of fantastic futility.

### A DISCARDED PRECEDENT

What has been done about it? Back in 1918, in the *Toledo Newspaper* case,[5] the Supreme Court did something about the problem. That case involved nothing as violent as what we have just been discussing. The contest there had to do with a street car fare. There was a difference of opinion in the community as to whether the street car company should or should not get an increase in fare, and the City passed an ordinance providing for the lower fare on a more or less temporary basis. An injunction to prevent enforcement of the ordinance was applied for. One of the newspapers expressed the view in its columns that if the judge granted the injunction there would be some question about his integrity and probity, and surely about his intelligence. It also intimated that the public might refuse to comply with the injunction, in terms which the judge considered an open invitation to resist the court's decision. The court found the editor guilty of contempt, and the decision was sustained by the Supreme Court. But in 1941, in *Nye* v. *U. S.*,[6] the Supreme Court repudiated the doctrine of the *Toledo Newspaper* case.

Since then there have been several decisions by the Supreme Court on the subject, but so far no publisher, no radio broadcaster, no writer, no one who sells information or opinions wholesale, has gone to jail or paid a fine. Not that the Supreme Court has said that they may not be punished in an appropriate case. The Court left a small area in which it said the contempt power still exist for protection of the judicial process. But the area of judicial freedom of action is becoming narrower and narrower, with the result that the liberties taken with due process are becoming greater and greater. Just when a court may act to defend the administration of justice is unclear. I suppose the Supreme Court would be more prone to sanction defensive action in a jury case than in a non-jury case, and probably would be more sympathetic to a contempt citation in a criminal than in a civil case. But that is only a guess on my part.

If you or I wrote upon a little memorandum, "I think witness X is a liar and you should not believe a word he says," and if you or I handed that memorandum on the courthouse steps to a juror, we may be sure that whoever was trying that case would send the bailiff to fetch us forthwith before the court where we would be dealt with summarily. Why should it make a difference that I have a big machine which multiplies that memorandum into a million copies and that I have a newsboy deliver it to the jury for me? I don't know, but apparently it does make a difference. You might say, as the Court said in the *Nye* case, that the federal contempt statute is limited to offenses committed "near" the courthouse, the Supreme Court holding that "near" means "geographically near". But in some of the state cases that reached the Supreme Court no such statute was involved, yet the Court reached the same conclusion on constitutional grounds.

### CONTEMPT PROCEEDINGS INEFFECTUAL

We shall not find a remedy for the situation in contempt proceedings. In the clash of the constitutional principles of freedom of the press and due process, the point of the contempt weapon has been blunted. The Supreme Court is loath to permit action that appears as though it is censorious. Mr. Justice Black in *Bridges* v. *California*[7] stated:

"Since they punish utterance made during the pendency of a case, the judgments below therefore produce their restrictive results at the precise time when public interest in the matters discussed would naturally be at their height. . . .

"This unfocused threat is, to be sure, limited in time, terminating as it does upon final disposition of the case. But this does not change its censorial quality. An endless series of moratoria on public discussion, even if each were very short, could hardly be dismissed as an insignificant abridgment of freedom of expression."

Yet it is clear that the Supreme Court has not gone as far in granting immunity to the press as the Constitution has conferred on members of Congress. To preserve freedom of legislative debate, the Constitution has ex-

5. Toledo Newspaper Co. v U. S. 247 U. S. 402.
6. 313 U. S. 33.
7. 314 U. S. 252, 268-269 (1941).

pressly granted to a Congressman the right to speak without the necessity of accounting to anyone but his constituents at election time. That freedom has top priority. If private injury be sustained in the process, it is the cost of that freedom of legislative discussion so necessary for the enactment of wise legislation and the defeat of measures not promotive of the public welfare. There is no such priority asserted in the Constitution as between freedom of the press and due process. They have equal priority, and having equal priority, they come into collision under the circumstances I have indicated.

Certain correctives suggest themselves, but on examination are found to be unrealistic. Change of venue was all right in the days of the horse and buggy, but today, in a celebrated case, the newspapers and radio blanket the country aand most communities are deluged with information and opinion about the case.

Some of my colleagues caution the jurors not to read the papers or listen to the radio during the trial. Not only does the warning usually come a little late, but if you are dealing with a celebrated cause in which juror John Doe sees his name in the newspapers for the first time in his life, it is probably futile. To prevent that man from reading the papers will result in his death from frustration. You might just as well ask Katherine Hepburn not to read her press notices following an opening night.

You can lock up the jury during the trial. But I doubt whether my colleagues believe they would have obtained juries in certain protracted cases if they had informed the members of the panels that they would be held incommunicado for a period of months.

## WHAT CAN BE DONE

Nevertheless, I do not think the members of the bench and bar have done all they might have done. This hypothetical columnist, Sokolborn, is after all not a bad fellow. He has no desire, really, to subvert the judicial process. That is not his intention. He is a good citizen, and if you told him he was undoing due process, he would be alarmed, shocked and resentful. On the basis of conversations I have had with practitioners of the pen, I believe many of them do not really know to what it is that lawyers and judges take exception. They think we object to their manner, to their choice of language, to sensationalism. Their eyes open wide when they find that, so far as the judicial process is concerned, they can be as sensational as they like.

It is when their writings impinge upon the judicial process in the fashion I have described that judges and lawyers stand up in arms. I don't think we have made that clear to the press. Our small efforts to do so have not amounted to much. And I think a great deal could be accomplished if we stated, in simple language, the objectives we have in mind and the restraints we expect the press to observe. They would then discover that there was really no undue interference either with artistic expression or the commercial instincts of the paper's treasurer. A formulation of standards would go a long way to clarify the problem and evoke efforts for its solution.

My other suggestions are two-fold. Since the area of judicial action is circumscribed in the extreme, and since we are unlikely to get remedial legislation because of constitutional limitations, I think we must resort to the voluntary remedy. A permanent body composed of members of the bench, bar and press should be organized to bring together the viewpoints of all concerned. I am confident that common ground would be found upon which all could stand, preserving to each the essentials for decent and orderly functioning. After all, the press and the courts are mutually interdependent. The press must have an uncoerced judiciary to maintain freedom of the press; and the judiciary requires an uncensored press to maintain an uncoerced judiciary. Only ignorance of each other's problems can keep such natural partners in conflict. With enlightenment may come resolution of the clash, or at least mitigation of its evils.

Next, I would, as part of this cooperative endeavor, like to see a watchdog committee of the bar established, composed of district attorneys and general practitioners. Once a celebrated case came to the fore, that committee would be alerted to see that the press did not interfere unduly with the judicial function. With the establishment of an amicable relationship and a channel of communication between the press and the judicial system, with an understanding of the standards to be observed, you would, I believe, get a great deal of co-

operative response from publishers who were simply told that the committee believed their columns were running afoul of those standards. Most of our newspapers are published by very well behaved persons who, if they trespass on our domain, do so unintentionally and not maliciously. And if an independent committee of the organized bar, having no personal stake in the case, were to call on Mr. Sokolborn and were to tell him that his column of the preceding evening was close to the line and that it was creating a danger to due process and was violating an established standard, we would I think, if we did not achieve Utopia, nevertheless, accomplish considerable results. If ever the time came that a publisher was to be punished for contempt, the fact of a warning by such a committee would weigh considerably in determining whether he was guilty, and if so, whether he should be punished, and if punished whether the decision should be sustained on review.

That is my story. It is a subject that has given me personally, and I know my colleagues, a great deal of concern in the recent past. It is a subject in which I believe the bar, if it is to measure up to its communal responsibilities, must take an interest.

# Extradition of Young Persons

*By* WARREN FREEDMAN

EXTRADITION is the surrender by one sovereign state or nation of persons found within the state who are charged with having committed treason, felony or some other crime in the demanding state. An executive officer of the demanding state makes application to the governor or executive officer of the asylum state. In general, statutory provisions require that (1) the accused be demanded as a fugitive from justice, (2) the demand by the executive of the state from which he fled be accompanied by a copy of the indictment or affidavit made before a magistrate charging the fugitive with having committed a crime in the demanding state, and (3) the indictment or affidavit be certified to by the executive of the demanding state.

Technically, this procedure of inter-state cooperation is called Rendition. Extradition seems to be reserved for international exchange of persons charged with crime who have fled the country. However, in the United States, perhaps due to the adoption of the Uniform Criminal Extradition Act by some thirty-two states (see New York Code of Criminal Procedure, Sections 827-859), the extradition provisions of the U. S. Constitution (Art. 4, Sec. 2, cl. 2), and the various federal statutes on extradition (see United States Code, Title 18, Sections 662 and 662a, repealed June 1948 by Section 5001, new Title 18) extradition and rendition have been treated alike in the systematization of the law.

State and federal statutes have generally been effective in dealing with the "rendition" of adult persons charged with commission of a crime, but where youthful offenders are involved, extradition has met with many obstacles. The courts, where the executive of the asylum state has refused to extradite the young person, are still hampered by statutes that make juvenile delinquency not a crime. (See New York Penal Code, Section 2186). By the weight of authority, a person must be charged with a *substantial* crime against the laws of a state or the federal government before extradition proceedings can be commenced. (See Marbles v. Creecy, 215 U. S. 63 (1909), and Hyatt v. New York, 188 U. S. 691 (1902). It is the duty of the governor of the asylum state to determine whether a substantial crime has been committed before he complies with the demand, and in many cases this decision is arbitrary in nature. (See People ex rel. Cornett v. Warden of City Prison of Brooklyn, 112 N. Y.

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S. 492 (1908). Under Section 829 of the New York Code of Criminal Procedure only persons charged with or convicted of treason, felony or *other crime* can be extradited. Thus, the governor must determine whether a person to be extradited has committed "other crime" or not. In 1940 the Attorney-General of the State of New York closed the gap somewhat by declaring that a child or minor committed as a juvenile delinquent is not a person charged with or convicted of "other crime."

Our statutes, like the common law, never did deal with the extradition of young offenders at any great length, and so the law was compelled to embroider upon the "garment of society." In the first place, the commitment of a minor is not a criminal proceeding, it is stated, but rather an exercise of the state's guardianship and protection over such unfortunate children. New York has declared that a child over seven and less than sixteen years of age who has committed an act which if committed by an adult would be a crime not punishable by death or life imprisonment, is not guilty of any crime. (See Penal Code, Section 2186). The child's offense is merely juvenile delinquency, and the State treats such a person different from criminal offenders, as indeed it should. But if such a juvenile delinquent should cross a state line in his meanderings, extradition papers are difficult to get in view of the fact that the child has not been charged with a substantial crime. In New York if the child comes within the provisions of Section 121 of the Social Welfare Law, he can be removed from the State by a county sheriff on order of a county judge who has determined that the child has residence outside of New York or belongs to legally responsible relatives or friends able and willing to undertake the obligation of his support outside the State.

In 1940 the Supreme Court of Queens County, New York, extradited a thirteen-year-old Negro boy upon a Georgia indictment for rape. (People ex rel. Butts v. Morehead, 173 Misc. 1061, 18 N. Y. 2d. 696 (1940)). The boy was indicted, during his presence in New York, by a grand jury of a Georgia superior court. Mr. Justice MacCrate upheld extradition because "until a juvenile court of the demanding state has taken jurisdiction, he stands indicted of a crime by the grand jury of a court of competent jurisdiction." Under Georgia law, even the future establishment of juvenile courts would not deprive the superior court of exclusive jurisdiction which was given over rape by the Georgia constitution.

The federal statutes handle the problem of extradition of young persons with much greater understanding and skill than the State statutes. Former Section 662a of the United States Code, Title 18 (now Section 5001) was incorporated by reference in the Federal Juvenile Delinquency Act of 1938 (18 U. S. C., Sections 5031-5037). This section declares as its purpose the cooperation with states in the care and treatment of juvenile offenders, and provides for the surrender by federal authorities of a youthful offender whenever any person under 21 shall be arrested, charged with the commission of any crime punishable in any court of the United States, and after investigation by the Department of Justice, if it shall appear that such person has committed a criminal offense or is delinquent under the laws of any state that can and will assume jurisdiction over and will take custody and deal with him according to the laws of such state, and that it will be to the best interests of the United States and of the juvenile offender to surrender the offender." The United States Attorney for the district in which such person has been arrested is then authorized to forego prosecution and surrender him. It becomes the duty of the United States marshal of the district, upon written orders of the United States Attorney, to convey the offender to such State or part thereof and deliver him into the custody of proper authorities, provided "that before any person is conveyed from one State to another . . . [such] person shall signify his willingness to be so returned, or there shall be presented to the United States Attorney a demand from the executive authority of the State to which the prisoner is to be returned supported by indictment or affidavit as prescribed in Section 3182 of this title." In Barnes v. Pescor, 68 F. Supp. 127 (1946), it was held that the United States Attorney for the Western District of Missouri had discretion as to whether a juvenile offender who had robbed a bank should be prosecuted as a juvenile delinquent or as a criminal under indictment as in the case of adults for the specific offense allegedly committed.

Thus, from the pattern of cooperation set forth by federal authorities, a working solution

to the problem of extradition of young persons from one State to another State can be found. Extradition should not rest merely upon the nature of the State statutes defining juvenile delinquency, but upon the common understanding between the States of the nature of the problems of juvenile delinquency and the best interests of the young offender.

## Interprofessional Commission on Marriage and Divorce Laws

An Interprofessional Commission on Marriage and Divorce Laws was organized at the Park Sheraton Hotel in New York June 16 and 17. Its purpose, as redefined and adopted at that meeting, is as follows:

"The ultimate purpose of this organization shall be to bring about improvement in the laws of the several states relating to marriage and divorce and allied phases of family law, to the end that the law, in both philosophy and procedure, may tend to conserve, not disserve, family life; that it may be constructive, not destructive, of marriage; that it may be helpful, not harmful, to the individual partners and their children; that it may be preventive rather than punitive of marriage and family failure.

"Specifically, but without prejudice to the generality of the foregoing, the purpose shall be:

"A. To study existing laws, their operation and their effects upon the individual, the family and society.

"B. To scrutinize proposals for the improvement of these laws in an effort to discover the best possible proposals and measures for their implementation.

"C. To prepare or collaborate in the preparation of a model uniform act or series of acts designed to effect the foregoing and suitable for submission to the legislatures of the several states.

"D. To do any and all things incidental or necessary to the attainment of the ultimate purpose."

Its membership consists of fourteen recognized leaders from the fields of law, religion, medicine, psychiatry, psychology, sociology and education. Representing the field of law are Judge Paul W. Alexander of Toledo, chairman of the American Bar Association committee; N. Ruth Wood, St. Louis woman lawyer, and Charlton Ogburn of the New York bar.

The Commission is a direct outgrowth of the National Conference on Family Life which convened at the call of the President of the United States at Washington in May, 1948. The Conference presented a report which was widely publicized and received much favorable comment, despite or perhaps because of its revolutionary nature. An account of it was published in this Journal in August, 1948.[1] The report scathingly denounced the follies and evils of present divorce laws and offered some unconventional and challenging suggestions for their basic reform and for the establishment of family courts to implement them.

Among them was a proposal to abolish provisions for antagonistic procedure in divorce cases along with the current emphasis upon grounds for divorce and other traditional and legalistic concepts, and to adopt the standard juvenile court philosophy of diagnosis and treatment in the hope of conserving family life. Suggestions designed to put the brake on hasty and ill-advised marriages were included.

At the September, 1948, convention of the American Bar Association in Seattle, a special committee on divorce and marriage laws and family courts was appointed "to carry forward the proposals embodied in the resolutions" adopted by the Legal Section of the N. C. F. L. This committee invoked the cooperation of a group of national organizations, including the National Conference on Family Life, the National Association of Women Lawyers, the National Probation and Parole Association, the National Legal Aid Association, the American Social Hygiene Association, and the National Desertion Bureau. Special cooperating committees have been appointed by the National Conference of Commissioners on Uniform State Laws and the Association of American Law Schools.

Organization of the Interprofessional Commission is the latest step in a movement which promises to develop into a major assault upon one of the greatest anachronisms remaining in the American legal structure. The Commission is presently in touch with a number of legal research groups and individuals, and is busy laying the groundwork for getting under way in the fall of this year. The next plenary meeting will be held in New York beginning September 22.

## District of Columbia Court Plans to Set Up Office of Marital Affairs Counsel

Establishment of an office of Marital Affairs Counsel as an adjunct to the United States District Court for the District of Columbia has been recommended by a committee of judges of the Court and approved by a special committee of the Bar Association of the District of Columbia.

Functions of the office would include:

1. Investigative

a. Investigate and report to the Court regarding needs and means of the parties with respect to alimony and maintenance.

b. Investigate and report to the Court regarding means and facilities for maintenance and custody of children.

c. Conduct new investigation of current status in actions to amend, revise or set aside court orders.

2. Enforcement

a. Collect all alimony and maintenance payments and disburse them to the designated recipients.

b. Initiate and carry out legal action to enforce their payment in case of default.

c. Issue subpoenas, take testimony and conduct hearings.

The investigative work of the Marital Affairs Counsel will provide the Court with an unbiased and unemotional appraisal of needs and resources which will enable the Court to do better justice between the parties, and its enforcement activities will prevent hardship by ensuring uninterrupted continuance of payments.

The plan calls for a supporting staff of two chief assistants, one in charge of administrative operations and the other of investigative and enforcement activities, four investigators, a cashier, three stenographers and five clerks to handle the detail work of receiving and disbursing money and making records of payments. It is estimated that the entire cost of the office will be more than offset by savings to the community in welfare support to families now often unable to collect support money.

District Judge Edward A. Tamm is chairman of the committee which drew up the plan. It is patterned to a great extent after the office of Friend of the Court, Wayne County Circuit Court, Detroit, Michigan, described in an article in this Journal in April, 1946 (29 J. Am. Jud. Soc. 166). In the course of his study Judge Tamm spent several days in Detroit as guest of Edward Pokorny, Friend of the Court, and Presiding Judge Ira W. Jayne of the Wayne County Circuit Court. Full description and discussion of the plan, and text of legislation drafted for its establishment, appears in the May, 1950, issue of the Journal of the Bar Association of the District of Columbia.

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## Summer Apprenticeships for Law Students Sponsored by Kentucky Bar

A program of summer apprenticeships in Kentucky law offices for law students has been established under the sponsorship of the Kentucky State Bar Association. Under this plan, the first of its kind in the country, the Association acts as intermediary in finding openings and placing students in them. The student selects an attorney from among those listed as available, giving first and second choices. He then spends from four to six weeks with the one to whom he is assigned, acknowledging deeds, conferring with prospective clients, attending court sessions, and otherwise observing and participating as far as possible in the lawyer's daily work.

The relationship is a personal one between an individual attorney and the student, and not merely a job in a law office. It is important that the attorney be connected with a busy office in order that the student may get to learn as much as possible. No pay of any kind is involved, the students doing it entirely for the sake of the experience to be gained.

Marcus C. Redwine, last year's president of the Kentucky State Bar Association, is chairman of the committee in charge of the project. Fifty-two applications were received from law students at the beginning of the summer, and thirty or forty more were expected to come in after summer school.

"We hope," said Mr. Redwine, "that the plan will grow and expand to the point where our law colleges will give college credit to those serving this apprenticeship."

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## Colorado Bar Association Broadcasts Second "You and the Law" Series

The Colorado Bar Association has just concluded its second thirteen-week radio series over eleven Colorado stations. It is a new "You and the Law" series similar to the public information program so entitled which was broadcast and proved popular last year.

Surveys showed that last year's "You and the Law" had an excellent listener response and was enjoyed by housewives, working men, teachers and other laymen. This year, in addition to legal problems, the attention of the public has been directed to state-wide prob-

lems of judicial administration. Following are the subjects in the order in which they appeared:

1. The Bill of Rights and You.
2. Check and Double Check (banking).
3. Round Trip to Canon City (parole and probation).
4. Divorce Unlimited.
5. What's in Another Name? (joint tenancy, tenancy in common).
6. You Be the Judge (judicial reform).
7. So You're Going into Business! (small business organizations).
8. Welcome, Stranger. (citizenship).
9. Who's Crazy Now? (insanity).
10. It's Free, but It Costs You (unauthorized practice).
11. It's in the Fine Print (contracts, loans).
12. Criminal, Criminal Laws.
13. The Grand Jury.

The transcriptions are produced by the Rocky Mountain Radio Council under the supervision of William Hedges Robinson, Jr., past president of the Colorado Bar Association and now a member of its Public Relations Committee.

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## Denver High School Students Learn "Every Day Law"

A little-known course at West Denver High School—possibly the only one of its kind in the country—is described by District Judge Edward C. Day in a recent issue of the Denver and Colorado Bar Associations' magazine *Dicta*.

Called "Every Day Law for Seniors," the lecture course is part of the regular curriculum of the school. It was designed, of course, to help prepare the seniors for better citizenship, but its indirect effect has been to awaken an awareness in the students to the vital part the legal profession plays in community life.

The objectives of the course are—

1. To increase students' knowledge concerning laws governing their every-day living;

2. to show that law is a basic device for protecting the individual and assuring his freedom;

3. to help the students realize the limitations of their privileges, rights and freedoms in society so that they may live more harmoniously with others; and

4. to show that *people* make laws and that laws are not static but dynamic.

To accomplish these objectives, the students are given elementary instruction, from the layman's point of view, in laws relating to such subjects as the responsibility of parents toward their children, education of children, marriage and divorce, insurance, wills and inheritance, travel and public conveyances, employer-employee relationships, purchase and sale of property, mortgages, and landlord and tenant relationships. Class instruction by the regular teachers is supplemented by lectures by visiting lawyers, judges, insurance men, labor leaders and real estate men.

Study is not confined to the classroom. The students visit the marriage clinic and the courts. In studying the laws of travel and public conveyances, they visit hotels, interview train conductors, airline pilots and bus drivers, and collect samples of hotel rules for guests and travel insurance policies.

In view of the success of this course at West High School, the Public Relations Committee of the Denver Bar Association is making plans to arrange for the offering of similar instruction in schools throughout the city and state.

"Starting with the vital statistics regulations which make necessary the registration of his birth," says Judge Day, "and ending with the laws and regulations governing where and how deep he shall be buried, the citizen lives under statutory regulations and fundamental legal and moral obligations so numerous that he is hardly conscious of them and takes most of them for granted.

"Most citizens go through their span of life getting into trouble, losing money or paying usurious interest, without ever obtaining legal advice from its most logical source, the lawyer. But it is probably predictable that few, if any, of the future citizens from West High School will ignore or shy away from the legal profession when it comes to their daily transactions. So if our Committee on Public Relations can expand its program to include the youth of the city, all of them—potential clients of the future—will have a better understanding of and a better feeling towards the legal profession. That's the best kind of public relations."

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## Women Lawyers Draft Uniform Divorce Act

A proposed Uniform Divorce Act has been drafted and published within recent weeks by Women Lawyers. It does away with the ada committee of the National Association of verse nature of divorce proceedings and empowers a court to dissolve a marriage whenever because of gross violation of mutual fidelity, mutual respect, mutual obligations of support or consortium, or lack of physical, mental or sexual capacity its continuation is unbearable to the parties, unfair to the children and of no value to the state.

## Hawaiian Constitutional Convention Drafts Judiciary Article

The proposed new constitution for the State of Hawaii recently drafted by the Constitutional Convention was published in full in the *Honolulu Advertiser* of July 19. Its judiciary article contains provisions for appointment of judges, retirement of judges, administrative control of the judiciary, and judicial rule-making power. Provision is made for a supreme court and circuit courts, and for establishment of inferior courts by law.

Justices of the supreme court and judges of the circuit courts are to be appointed by the governor by and with the advice and consent of the senate, substantially in accordance with the federal method. Mr. C. Nils Tavares, Honolulu attorney, to whom we are indebted for our copy of the draft constitution, explained in a letter that the Bar Association of Hawaii had voted almost ten to one in favor of an appointive judiciary with nomination by a judicial council, rejecting, however, the subsequent confirmatory election as in the Missouri Plan. However, there was considerable pressure in the convention for straight election of judges, and the appointive plan without the nominating commission was adopted as a compromise. Terms of office are six years for circuit judges and seven years for supreme court justices.

All judges are to be retired at age seventy, and "shall be included in any retirement law of the State." Retirement for incapacity is provided for upon the recommendation of a board of three persons specially appointed by the governor, and judges otherwise are to be "subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature, sitting in joint session, for such causes and in such manner as may be provided by law."

The chief justice is to be the administrative head of the courts, with power to assign judges for temporary service from one circuit to another or on the supreme court. With the approval of the supreme court he is to appoint an administrative director to serve at his pleasure. The supreme court is to have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law.

**Facts About Lawyers And The Law:** *Number 1*

WE HAVE *lawyers* because we have *laws* . . . and *courts* . . . and *judges*. Each is a vital factor in protecting the fundamental rights of every citizen.

▶ "Law" consists of rules of conduct prescribed by the controlling authority of a nation or state. Laws are meant to protect our personal and business welfare.

▶ Many other legal rules of conduct are established by city councils and various agencies, boards and bureaus which administer the laws.

▶ Rules of conduct are also established by many courts of the country in interpreting the common or unwritten law. The law is changing or growing every day.

▶ Lawyers are persons who have devoted their lives to the job of learning (through specialized study and experience) as much as possible about these many complex rules of conduct . . . in order that they may advise and protect the rights and liberties of those who are not thus informed.

▶ Every Indiana lawyer is accountable to our State Supreme Court for his professional conduct and is bound by oath to serve each client's interest to the best of his ability. He is in effect, an officer of any court in which he practices his profession.

PUBLIC INFORMATION COMMITTEE

**INDIANA STATE BAR ASSOCIATION**

INDIANAPOLIS INDIANA

*Defending Your Personal Rights and Privileges*

## Indiana Bar Launches Institutional Advertising Program

A series of six newspaper advertisements prepared by the Indiana State Bar Association with the help of public relations counsel has been made available to local bar associations of that state and so far has appeared in about eleven Indiana newspapers with combined circulation of about 350,000. Following are the titles of the six advertisements:

1. Facts About Lawyers and the Law.
2. How Are Lawyers Obligated?
3. What Does a Lawyer Cost?
4. *Right* Word in the *Wrong* Place.
5. How Does a Lawyer Work?
6. Settling Disputes Peacefully.

The first one is reproduced on this page, and others will follow in future issues of THE

JOURNAL. Dimensions of the originals are approximately six by eleven inches. Although they were planned primarily for Indiana distribution, the Association has granted bar associations of other states permission to use them. Inquiries should be addressed to Owen Voight, Esq., Chairman, Public Relations Committee, Indiana State Bar Association, Jeffersonville, Indiana. The advertisements were prepared during the chairmanship of Richard P. Tinkham of Hammond.

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## State-Wide Minor Court Reorganization Will Appear on November Ballot in California

A plan for reorganization of the inferior courts of California, on which the State Bar, the Judicial Council and other interested organizations have been working for about ten years, will be submitted to the voters of that state in the November election.

There are now 768 courts in California exercising jurisdiction below that of the superior courts. There are six different types of city courts and even two classes of township or justice courts, Class A and Class B. All are established on the basis of political subdivisions without regard to case load, and there are instances of judicial business which would keep one full-time court occupied being divided among four or five part-time courts. Thus in Gardena Township, Los Angeles County, there are six cities each with a separate city court, along with a township court. On the other hand, some municipalities lie in more than one township, and in Bakersfield there are two Class A and one Class B township justice courts and a city police court. In Stockton there are two township justice courts, a city justice's court and a police court.

The constitutional amendment to be voted upon in November will set up a simplified minor court system with just two classes of courts—municipal and justice courts. Counties will be divided by the legislature into judicial districts, so arranged that no city will lie partly in one and partly in another. There will be a single minor court in each district—a municipal court if the population of the district exceeds 40,000, and otherwise a justice court. The municipal courts will be staffed with judges and court officers sufficient to provide adequate service to the largest communities, but no two cities of over 40,000 will be in the same district, and thus every city of that size will be assured of its own municipal court. Some cities of less than 40,000 may have a municipal court by including within the judicial district adjacent small towns or unincorporated areas sufficient to bring the population of the district up to that figure.

Municipal courts will have civil jurisdiction up to $3,000 and criminal jurisdiction below the grade of felony. Justice courts will have jurisdiction of civil cases involving $500 or less, low-grade misdemeanors, and cases involving failure to provide. All judges will be elected for six-year terms at general elections by the voters of the districts. Vacancies in the municipal courts will be filled by appointment of the governor, and in the justice courts by the county board of supervisors. Municipal court judges will be required to have five years experience in the practice of law, with prior judicial service counted for that purpose in the case of judges now on the bench who could not otherwise qualify for re-election. Justice court judges will be required either to have been admitted to practice law or to have passed a qualifying examination under regulations prescribed by the Judicial Council, but present justices who run for re-election will be exempt from this requirement. The number and salaries of municipal court judges will be fixed by the legislature, and of justice court judges by the county supervisors, but the latter will be subject to a minimum salary schedule set up by the legislature.

Minor court reform has been an issue in California for more than two decades. A special committee of the State Bar has been at work on it since 1940, and the Judicial Council since 1942. In 1946 the State Bar drafted and published an elaborate "County Court Plan" which was vigorously debated and resulted in passage of a legislative resolution requesting the Judicial Council to make a fresh study and submit specific recommendations. The State Bar and other interested organizations joined in this endeavor, and were able to agree upon the present plan, which the 1949 legislature by a nearly unanimous vote agreed to submit to the electorate in 1950. If it is adopted, the first of the new courts will begin to function on January 1, 1952, and the plan will be in complete operation a year later on January 1, 1953.

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## Pre-Trial Statute Enacted in Louisiana

A statute providing for pre-trial procedure for the state courts of Louisiana substantially in accord with federal practice was enacted by the 1950 Louisiana legislature. Known as Act

158 of 1950, the bill was introduced by the Shreveport delegation in the legislature, and had been sponsored by the Shreveport Bar Association. A pre-trial institute was conducted in Baton Rouge last December under the joint sponsorship of the Baton Rouge Bar Association and the law school of Louisiana State University, and the measure was endorsed by the Louisiana State Bar Association at its May convention following a strong recommendation of its Standing Committee on Jurisprudence and Law Reform.

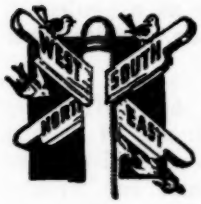
Also approved at the state bar convention were recommendations of the same committee for a state court administrator's act, for judicial rule-making power, and for increases in salaries of Louisiana judges. Interest in judicial reform has been heightened by the prospective constitutional convention on which the voters will decide at the November election.

### Study of Basic Structure for Children's Services in Michigan

A study of the basic structure for children's services in Michigan has been undertaken as a project of the James Foster Foundation, Ann Arbor.

"Michigan legislation and public children's services have grown like Topsy over many years," Former Probate Judge Stephen H. Clink of Muskegon, secretary of the Foundation, explained in the announcement of the project. "Ours was one of the first states to have a separate boys' correctional school, a separate public school for orphans, a juvenile court, and mothers' pensions. But over the years services have been expanded, laws enacted and agencies established with little reference to the entire pattern of child needs and what the state can afford. Unquestionably there are overlapping function, duplication of service, and gaps in facilities. The Foundation's aim in this first study is to find out exactly what the situation is, how well Michigan children are served, and what needs to be done to make present services more effective and to fill in the gaps."

Child welfare experts throughout the country have expressed an interest in the Michigan study and a desire to consult its findings. Many look upon it as a pilot study which may spur other states to action.




## From Here and There

OHIO—The Committee on American citizenship of the Ohio State Bar Association has compiled for the use of local bar associations of that state a year-round calendar of suggestions for citizenship activities. Sidney G. Kusworm, Keith Building, Dayton, is chairman of the committee.

BALTIMORE—A youth court to give special treatment to juvenile offenders has been established by the Supreme Bench of Baltimore City.

TEXAS—A non-communist oath as a requisite to a license to practice law was recommended to the legislature by the State Bar of Texas at its 1950 convention in San Antonio last month.

OREGON—A comprehensive, continuing, statewide public relations program has been drafted by public relations counsel for the Oregon bar. If approved by the Board of Governors at its meeting this month, it will be presented to the membership for adoption at the annual meeting in September. Harvey Benson, Portland, is chairman of the public relations committee.

MARYLAND—Fifty per cent increases in judicial pensions, to compensate for increased cost of living, are proposed in a resolution adopted by the Maryland State Bar Association at its 1950 annual meeting.

TEXAS—Admission of Negro students to the University of Texas law school has been ordered by the United States Supreme Court, on the ground that the separate law school provided for them does not afford equal opportunities.

SAN FRANCISCO—Public Defender Gerald J. Kenny's annual report for the fiscal year 1949-1950 shows 2,891 cases handled in Superior and Municipal Courts. There were 7,434 court

appearances, 5,671 consultations with defendants in jail and prison, and 3,491 indigent persons were given advice in civil matters. Of the 66 jury trials in Superior Court, 37 ended with verdicts of guilty, 20 not guilty, 4 guilty of lesser offense, and 5 disagreed.

LONDON, England—Electronic tape recording is to be used to take down proceedings in the London law courts. Lord Chief Justice Goddard has tested and approved the new equipment.

MINNEAPOLIS—Mock trials in schools have been conducted by the Hennepin County Bar Association for the past two years. Civics classes choose plaintiffs, defendants, witnesses and jurors from their number, and the witnesses are shown a motion picture of an automobile accident upon which the case is based, and from which their testimony is drawn. Minneapolis lawyers try the cases, and district and municipal court judges preside.

KANSAS—The Missouri plan for selection and tenure of judges was endorsed in principle by the Kansas State Bar Association at its 1950 convention in Wichita, and appointment of a committee to draft an adaptation of it for introduction in the 1951 legislature was ordered. A previous version was introduced in 1949 but was not reported out of committee.

CALIFORNIA — Judges may attend political dinners, the Conference of California Judges has decided, but a payment in excess of the reasonable value of the dinner, as at a $100-a-plate Jackson or Lincoln Day dinner, is an assessment or contribution in violation of the canons of ethics.

NEBRASKA — Standardized jury instructions adopted by the Association of District Judges of Nebraska have recently been published in an 80-page booklet. Judge William F. Spikes, St. Paul, is chairman of the committee which has been working on the project since 1942.

AKRON, Ohio—The Legal Secretaries Association has scheduled a dinner meeting August 21 with a speaker from the local social security office, a dinner and style show on September 25, and an institute, sponsored by the Akron Bar Association, on October 16.

NEWARK—Over forty paintings by ten members of the Essex County Bar Association were exhibited at the Academy of Art in Newark during the week of June 4, as part of the Essex County Bar Association's second annual art exhibit.

TOLEDO—Sixty-five out of one hundred law offices polled by the law reform committee of the Toledo Bar Association favored elimination of marriages by justices of the peace and mayors. Twenty-four opposed the change.

MARYLAND — Voters are to decide at the November election whether or not a constitutional convention is to be called. The League of Women Voters and the Bar Association of Baltimore City have recommended a favorable vote.

CONNECTICUT — The special reorganization session of the legislature adjourned after effectuating only a meager portion of the program of the Commission on State Government Organization. None of the judiciary proposals, drafted by Judge Charles E. Clark, were adopted.

JACKSONVILLE, Fla.—The Duval County Small Claims Court in ten months of operation has passed the 4,000th case on its docket. The court was established in 1949 as a project of the Jacksonville Bar Association, and its maximum jurisdiction is $100.

LOUISIANA — One hundred and fifty-seven world war veterans, law graduates of Tulane, Loyola, L. S. U. and Southern Universities, were admitted to the Louisiana bar without examination in special exercises before the Supreme Court of Louisiana on June 15. The group included two women.

FLORIDA—Ten state-wide organizations with total membership of about 300,000 have joined the Florida Bar in endorsing and sponsoring a Juvenile Court Amendment to the state constitution to be voted upon in the November election.

SAGINAW, Mich.—A consent decree enjoining the Frankenmuth State Bank from practicing law was entered by Circuit Judge John V. Brennan in a suit brought by the Committee on Unauthorized Practice of Law of the State Bar of Michigan.

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Liberty has never come from the government. Liberty has always come from the subjects of it. The history of liberty is a history of limitations of governmental powers, not the increase of it.—*Woodrow Wilson*

# The Reader's Viewpoint

## Flaws in Proposed Judicial Recall Plan

*To the Editor:*

I noticed in the June issue of your periodical a discussion on "A New Plan for Recall of Judges" by Arthur C. Schreiber (34 J. Am. Jud. Soc. 20). I have had quite a little experience in the practice of law, and I have known judges who should be recalled in some way or shot at daybreak, but I never have been able to figure out a feasible plan. I have read this article with a good deal of interest, but my conviction is that it would be unconstitutional.

Mr. Schreiber's plan smacks of socialism, in my judgment, and I am opposed to that and to communism in every form.

The present tendency is to deprive the public of powers and to centralize them in the government or in special groups. I think the present system is better than the one suggested, because I think it better for judges to be answerable to the public as a whole than to the attorneys alone. The whole public is concerned about who shall be the judge, and is able to get some degree of information about his competency through attorneys and bar associations and from personal observation and contact with the judges.

Another objection that comes to my mind is that Mr. Schreiber's proposal would set up a small band of people who might be controlled by politics. Attorneys after all are human beings, and a great many attorneys now undertake to influence the courts for their personal gain. I think it would be easier for this class of attorneys to do this under the proposed plan than under the present system. Ordinarily that type is more active than the class of attorneys who are willing to submit their cases to an impartial judge. I have never understood just why the better class of people are slower to enlist in the cause of right than the other class are in their alert and active support of efforts to overcome the right. It is a known fact that church-going people are very slow to take any interest in any political movement, while on the other hand the other crowd is alert and exceedingly active to accomplish their purposes.

Another objection to this plan would be that I think the people would be very slow to place these powers in a small group of people. The public as a whole would not surrender the right of franchise to a few persons.

I am in favor of some method of recalling judges, but doubt the wisdom of the plan suggested in the above article.

G. W. BOTTS

De Witt, Ark.

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*To the Editor:*

Lawyers practicing before a judge should not have the power of "recall," but probably should have power of selection in the first instance by secret preferential ballot.

PAUL D. BARNS

Miami, Fla.

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In the Netherlands there are stonecutters who live in obscure little huts and each day they weigh on their scales jewels so precious that any one of them would suffice to take them out of their poverty forever. But at the end of the day, when they have returned the jewels to their anxious owners, they sit down serenely to dinner. On the same table where they weighed another's treasure without envy, they spread their frugal meal. So lives the judge. He decides enormous issues involving other men's treasures, and even their lives, but after he has polished his opinions so that they will reflect the brilliance of his wisdom he retires to a simple life of learning and serenity.—*Louis Nizer.*

# The Literature of Judicial Administration

## BOOKS

A year and a half ago we published in these columns Judge Jerome Frank's excellent dissertation on special verdicts from his opinion in Skidmore v. Baltimore and Ohio R. Co. (32 J. Am. Jud. Soc. 142, Feb., 1949). To the readers who enjoyed that stimulating bit of writing, and to all, we recommend Judge Frank's newest book, *Courts on Trial: Myth and Reality in American Justice.*[1] Written by one of the most gifted prose writers in the legal profession today, author of four other books, *Courts of Trial* boldly analyzes some glaring flaws in the administration of justice and points the way toward their solution.

Judge Frank's theme is developed from his algebraic representation of the work of a trial court in the equation RF = D, R being the rules of law, F the facts of the instant case, and D the court's decision. He contends that legal writers in general have devoted far too much attention to the R component of this equation and far too little to the F. Shelf upon shelf of law books debate and dissect the R's but ignore the F's entirely or treat them merely in terms of an assumed or agreed statement of facts. Judge Frank asserts, and few will deny, that there are more hazards to a correct D in the F's than in the R's, and he has coined the phrase "legal magic" to describe what he considers a superstitious faith in the efficacy of good legal rules alone to produce justice.

Unfortunately, Judge Frank dwells far more upon the fault than upon the remedy. He offers a few concrete suggestions, such as the use of special juries (as in the Skidmore opinion), jury training in public schools and adult education, and the rather preposterous one of including sound movies of the trial in the record on appeal in order to enable the appellate judges to make their own appraisal of the witnesses and their testimony, but these, and some others, get but a paragraph or a sentence, while the denunciation of "legal magic" goes on for chapter after chapter, not only in this book but in his others, which he cites and quotes continually.

But this may not be improper after all. It is asking a lot for one man to present full-blown and ready for adoption solutions to problems that have plagued the administration of justice for centuries. To sound the alarm and bring them to the active attention of many who have been only vaguely aware of their existence is in itself a great contribution, and with enough people working on them the solutions can and will be found.

* * *

There was a time, not very long ago, when beginning students in good law schools plunged on their first day into casebook study of substantive law without orientation of any kind either in that new method of study or in the general field of the law. They got their imperfect knowledge of the administration of justice and of the profession they were preparing to enter from oblique references in procedural courses and from an occasional assembly lecture by a visiting attorney.

There are few law schools today that do not make some systematic effort to supply that need. Special orientation lectures and reading matter are provided; procedural courses have been broadened to include the whole field of judicial administration and occasionally have been renamed judicial administration courses; and regular lectures, with or without credit, are offered on legal ethics and the legal profession. Good case books in these fields have been written from time to time, by Hale, McCormick, Cheatham, Sunderland, Pirsig and others.

Within recent months Professors William T. Fryer and Carville D. Benson of George Washington University have published what appears to be the best combined casebook treatment of all these topics that has yet appeared. It consists of two companion volumes, *Legal Method*[2] and *Legal System*,[3] each designed to be used for a semester course of either two or three hours.

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1. Princeton, N. J.: Princeton University Press, 1949. Cloth, pp. xii and 441. $5.00.

2. Fryer and Benson, *Cases and Materials on Legal Method.* American Casebook Series. St. Paul: West Publishing Co., 1949. Pp. xxxvii, 899 and xxix. Buckram, pp. xxxvii, 899 and xxix. $.....

3. Same, *Cases and Materials on Legal System.* Pp. xxix, 1434 and xxxv. $.....

The first volume includes general introductory material about law and legal education and the case method of study, followed by a glimpse of the mechanics of actions at law, an introduction to basic legal philosophy through chapters on language in law, legal reasoning, and stability in law, and finally, chapters on legal research and use of legal materials. Important new aids are provided in each of these sections. Instruction on the case method includes not only textual discussion of it but illustrative treatment of four cases; the second section includes for collateral reading complete briefs and records of actual civil and criminal cases in state and federal trial and appellate courts; and the section on legal research includes along with text material on legal research and brief writing two legal problems and reprints of all materials relevant to them in statutes, cases, encyclopedias, law reviews, textbooks and even citators.

The second volume is in two parts, the English legal system and the American legal system. The first includes historical and analytical treatments of English courts and procedure, legal profession and law books. The second begins with a chapter "Origin and Growth of American Law" which includes an exposition of our English legal heritage and such present-day trends as the work of the American Law Institute and the commissioners on uniform state laws. The chapter "Developments in Courts and Tribunals" takes up state court organization, recent federal court reform, the judicial council movement, adminstrative agencies and arbitration. "American Legal Profession" takes up selection and tenure of judges, admission to the bar, organization of the bar and national bar associations, and legal aid. The last chapter "Restraints on Bench and Bar" deals with judicial and professional ethics and the unauthorized practice of law.

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There are three interesting new books on United States Supreme Court personalities. Willard L. King's life of *Melville Weston Fuller*[4] is a conventional biography beginning with the newspaper announcement of the marriage of Fuller's parents and ending with the newspaper comments on his career at the time of his death. It is written in readable style and contains quite a bit of American constitutional history of the long period of Fuller's tenure on the supreme bench. *Mr. Justice Black: the Man and His Opinions*,[5] by John P. Frank, is a biographical account of the life and career to date of the senior justice of the present-day Court, together with analyses and quotations from his most conspicuous opinions. Detailed attention is given in the narrative to the two most publicized features of Black's career—the furore over his Ku Klux Klan membership at the time of his appointment to the Court, and the so-called "feud" with Mr. Justice Jackson at the time Chief Justice Vinson came in. *The Constitutional World of Mr. Justice Frankfurter*[6] by Samuel J. Konevsky is nothing but a selection of forty-three of Frankfurter's best opinions, classified by subject-matter, edited for brevity's sake and with a factual introduction to each. There is not even a brief resumé of the Justice's career in the preface, and the opinions printed speak entirely for themselves without a word of comment by the author or anybody else. The book will be welcomed by Frankfurter admirers, but it would be more useful to the general public if the opinions selected had been presented in the light of their author's life and background, and with somebody's appraisal or opinion as to why they are important.

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Lawyers and bar associations will find much of interest in two recent publications of the University of Texas Bureau of Municipal Research—*Methods of Constitutional Revision*,[7] and *Public Relations Program for a Citizen Committee*,[8] both by John P. Keith. Together they constitute a useful collection of ideas and authorities from everywhere on how to get a new constitution first drafted and then adopted by the electorate. . . . The May, 1950, issue of the Michigan State Bar Journal is a 188-page bound and indexed volume containing complete texts of *Opinions of the Committee on Professional and Judicial Ethics of the State Bar of Michigan, 1936-1950*. Extra copies are available at $1.00 each to Michigan lawyers and $2.00 to others. . . . *Guardianship: A Way of Fulfilling Public Responsibility for Children*[9] is a 200-page publication of the Federal Secur-

4. New York: The MacMillan Company, 1950. Cloth, pp. x, 394. $5.00.

5. New York: Alfred A. Knopf, Inc., 1949. Cloth, pp. xix, 357. $4.00.

6. New York: The MacMillan Company, 1949. Cloth, pp. xviii, 325. $4.50.

7. Austin, Texas: University of Texas, 1949. Paper, 79 pp., mimeographed.

8. Same, 1950. 74 pp.

9. Children's Bureau Publication No. 330, 1949. Paper, 203 pp. Single copies free from Children's Bureau, Federal Security Agency, Washington 25, D. C. In quantities, from Superintendent of Documents, Government Printing Office, Washington 25, D. C., at 45 cents each, 25 per cent discount on 100 or more.

ity Agency containing report of a study conducted in six states to determine the use made of legal guardianship procedures for protecting the persons and estates of children. It should serve as a basis for setting standards, revising legislation and improving services of states to their dependent children.

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### ARTICLES

"State Barriers in the Legal Profession" by Hugh P. Williamson. Journal of the Missouri Bar, May, 1950, pp. 73-74.

"A Report on Prelegal Education" by Arthur T. Vanderbilt. New York University Law Review, April, 1950, pp. 200-290.

"A Change in the Old Order: England Streamlines Her Jury System" by Barnett Hollander. 36 A.B.A.J. 455-458 (June, 1950).

"Of Writing by Lawyers" by G. V. V. Nicholls. Canadian Bar Review, December, 1949, pp. 1209-1228.

"Reader Rights in Legal Writing" by Robert Littler. Journal of the State Bar of California, Jan.-Feb., 1950, pp. 51-67.

"The 1949 Lawyer Count: A Preliminary Statement" by Albert P. Blaustein. 36 A.B.A.J. 370375 (May, 1950).

"Weak Judges Weaken Your Rights" by Vera Connolly. Nation's Business, January, 1950. 4 pp.

"Terror by Law" by George N. Craig. American Legion Magazine, July, 1950. 4 pp.

"An Assured Place at the Bar: Shall There Be Quantitative Limitations as Well as Qualitative Requisites?" by James P. Gifford. Journal of the Oklahoma Bar Association, June, 1950, pp. 957-966.

Symposium on Young Offenders: "Rationale of Responsibility for Young Offenders" by Frederick J. Ludwig; "Unofficial Delinquency" by Paul W. Tappan; "Probation Techniques" by Irving W. Halpern; and "Institutional Treatment of Juvenile Delinquents" by Negley K. Teeters. Nebraska Law Review, May, 1950.

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